

1 UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE PATENT TRIAL AND APPEAL BOARD

3 MEDTRONIC, INC., and
4 MEDTRONIC VASCULAR, INC.,

5 Petitioners,

6 vs.

Case No. IPR2020-00126

U.S. Patent No. 8,048,032

7 TELEFLEX INNOVATIONS

8 S.A.R.L.,

Patent Owner.

9 IPR2020-00126 (Patent 8,048,032 B2)

10 IPR2020-00127 (Patent 8,048,032 B2)

11 IPR2020-00128 (Patent RE45,380 E)

12 IPR2020-00129 (Patent RE45,380 E)

13 IPR2020-00130 (Patent RE45,380 E)

14 IPR2020-00132 (Patent RE45,760 E)

15 IPR2020-00134 (Patent RE45,760 E)

16 IPR2020-00135 (Patent RE45,776 E)

17 IPR2020-00136 (Patent RE45,776 E)

18 IPR2020-00137 (Patent RE47,379 E)

19 IPR2020-00138 (Patent RE47,379 E)

20 VIDEOCONFERENCE VIDEOTAPED

21 DEPOSITION OF

22 JOHN J. GRAHAM, MB ChB, MRCP (UK)

23 DATE: November 19, 2020

24 TIME: 9:03 a.m.

25 PLACE: Toronto, Ontario, Canada

(via videoconference)

JOB NO.: MW 4338269

REPORTED BY: Dawn Workman Bounds, CSR

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Page 2

1 APPEARANCES
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 25 ALSO PRESENT:
 Greg Smock, Teleflex Counsel
 Matthew Kwan, Videographer

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1 PROCEEDINGS
 2 THE VIDEOGRAPHER: Good morning, everyone.
 3 We are now going on the record. The time is 9:03 a.m.
 4 Central Time. Today's date is November 19, 2020. Please
 5 note that microphones are sensitive and may pick up
 6 whispering, private conversations, and cellular
 7 interference. Please turn off all cell phones and place
 8 them away from the microphones as they can interfere with
 9 the deposition audio.
 10 Audio and video recordings will continue
 11 to take place unless all parties agree to go off the
 12 record. This is media unit number 1 of the
 13 video-recorded deposition of Dr. John Graham. This is
 14 taken by counsel for the Petitioner in the matter of
 15 Medtronic, Inc. and Medtronic Vascular, Inc. versus
 16 Teleflex Innovations, filed in the United States Patent
 17 Trademark Office. The Case Number is IPR2020-00126.
 18 This deposition is being held via Veritext Zoom remote
 19 conferencing.
 20 My name is Matthew Kwan from Veritext. I
 21 am the videographer. The court reporter today is Dawn
 22 Bounds also from Veritext. I am not authorized to
 23 administer an oath. I'm not related to any of the
 24 parties in this action nor am I financially interested in
 25 the outcome.

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1 Counsel and all present in the room and
 2 everyone attending remotely will now please state their
 3 appearances and affiliations for the record. If there
 4 are any objections to the proceeding, please state them
 5 at the time of your appearance, beginning with the
 6 noticing attorney.
 7 MR. PINAHS: Chris Pinahs from the Robins
 8 Kaplan firm on behalf of Petitioner Medtronic. I'll also
 9 be joined later today by my colleague Cy Morton also of
 10 the Robins Kaplan law firm.
 11 MR. KOHLHEPP: Peter Kohlhepp on -- of the
 12 Carlson Caspers law firm on behalf of the Patent Owner.
 13 I'm also joined today by Shelly Jonahs also of the
 14 Carlson Caspers law firm, as well as Greg Smock, counsel
 15 for Teleflex.
 16 THE REPORTER: Due to the need for this
 17 deposition to take place remotely because of the
 18 government's order for physical distancing, the parties
 19 will stipulate that the court reporter may swear in the
 20 witness over the videoconference and that the witness has
 21 verified that he is in fact Dr. John Graham.
 22 Agreed, counsel?
 23 MR. PINAHS: So stipulated by Petitioner.
 24 MR. KOHLHEPP: Agreed by the Patent Owner.
 25 THE REPORTER: Proceed.

<p style="text-align: right;">Page 6</p> <p>1 THE VIDEOGRAPHER: You may now proceed. 2 JOHN J. GRAHAM, MB ChB, MRCP (UK), 3 duly sworn via videoconference as stipulated by counsel 4 was examined and testified as follows: 5 EXAMINATION 6 BY MR. PINAHS: 7 Q. Welcome back, Dr. Graham. 8 A. Good morning. 9 Q. One piece of housekeeping before we begin, 10 Dr. Graham. 11 MR. PINAHS: Counsel, the notice at the 12 beginning was only for the 126 IPR. I'd like you to just 13 agree -- or can we agree on the record that today's 14 deposition transcript applies equally to all 11 15 instituted IPRs? 16 MR. KOHLHEPP: Counsel, we will agree 17 subject to the parties' agreement in the deposition 18 notice regarding the topics for day two. 19 MR. PINAHS: All right. Thanks. 20 BY MR. PINAHS: 21 Q. Dr. Graham, I would like you to pull out 22 Exhibit 2145 again, which is your declaration. 23 A. I have it. 24 Q. Excellent. Just to orient you, I'm going to do 25 my best today to work from hard copies again like we did</p>	<p style="text-align: right;">Page 8</p> <p>1 If you could turn to page 10 of your 2 declaration, I'm going to work again off of the page 3 numbers on the lower left of the page. 4 Just let me know when you're there. 5 A. I am there. 6 Q. All right. And this is the legal standard that 7 you set forth for claim construction, correct? 8 A. So earlier on, I think I state that I'm not a 9 lawyer. In fact, just at the bottom of page 9, bottom 10 left, in paragraph 13, I state I'm not an attorney. And 11 the legal standards that I'm including in this, I've been 12 informed by counsel that they are appropriate. 13 THE REPORTER: That they are what? 14 BY MR. PINAHS: 15 Q. You endeavored to -- 16 THE WITNESS: Appropriate. 17 THE REPORTER: Appropriate. Thank you. 18 BY MR. PINAHS: 19 Q. And, Doctor, you endeavored to apply these 20 standards when we were, for example, talking about the 21 claims construction of an interventional cardiology 22 device yesterday, correct? 23 A. I did. 24 Q. All right. I'd like to direct your attention 25 to paragraph 17.</p>
<p style="text-align: right;">Page 7</p> <p>1 yesterday. We may have to pull up document share from 2 time to time, but I will endeavor to keep it simple and 3 on the hard copies. 4 A. Understood. 5 Q. All right. So the first thing that I neglected 6 to ask you yesterday was what's the smallest size balloon 7 or stent you've delivered through a catheter and catheter 8 assembly? 9 A. The smallest size... 10 Do you mean the balloon diameter or the 11 crossing profile of the catheter? 12 Q. Balloon diameter. 13 A. One millimeter. 14 Q. And what about the crossing profile? 15 A. That, I'm -- 16 MR. KOHLHEPP: I'm going to object to 17 form. Go ahead. 18 A. That, I am unclear because it's something 19 that's not at the top of my head. I would have to go 20 back and review the data. 21 BY MR. PINAHS: 22 Q. All right. So my colleague also reminded me, 23 Doctor, that I neglected to walk through your legal 24 standards section with you yesterday, so I'd like to 25 start there.</p>	<p style="text-align: right;">Page 9</p> <p>1 And in paragraph 17, you say, unless 2 otherwise noted, you apply the constructions from Exhibit 3 1012. 4 Do you see that? 5 A. In the document filed by the Petitioner as 6 Exhibit 1012? 7 Q. Correct. 8 A. Yes. 9 Q. All right. So the -- in your declaration, you 10 provide a construction for an interventional cardiology 11 device and a means plus function claim term for the '380 12 patent, correct? 13 A. Could you direct me to that part of my 14 declaration, please; or I can spend some time finding it? 15 Q. I will -- I'll find it for you, Doctor. 16 You know what, why don't you go to page 3. 17 I think that's probably the easiest place to see it. 18 A. The contents page. 19 Q. So, Doctor, I'm just looking for you to confirm 20 that you provide a claim construction for two different 21 terms in your declaration, correct? 22 A. I'm sorry, you directed me to page 3. 23 And where are you talking on page 3? 24 Q. Yeah, so there's a Roman numeral VII. It says, 25 "The meaning of certain terms used in the claims of the</p>

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<p style="text-align: right;">Page 10</p> <p>1 GuideLiner patents." 2 Do you see that? 3 A. I do, yes. 4 Q. And you could feel free to jump forward in your 5 declaration to page 43 or 48. 6 But it's my understanding that you provide 7 a construction for the claims to an interventional 8 cardiology device and also that means for receiving and 9 guiding the interventional device claim term, correct? 10 A. Yes, agree to both. 11 Q. All right. So let's go back to paragraph 17 12 again, then. 13 So other than the two claim terms that we 14 just identified in your table of contents, any other 15 claim terms would come from Exhibit 1012, correct? 16 A. From the top of my head, yes; but I would have 17 to -- there's 130-odd pages of this. I would have to 18 read through it, but both two claim terms I agree are 19 included. I don't think there any more. If you're 20 saying they're all from 1012, then I will agree with 21 that. 22 Q. Yeah, that's all I wanted to understand, 23 Doctor. 24 Let's pull out claim -- or Exhibit 1012. 25 I want to talk about a few of those claim terms.</p>	<p style="text-align: right;">Page 12</p> <p>1 A. If the angled opening is at the proximal end, 2 it would imply that the distance to it -- 3 MR. KOHLHEPP: Sorry, I don't know if that 4 got on the record. 5 THE REPORTER: I don't -- I didn't hear 6 anything. What did you say? 7 MR. KOHLHEPP: I'm sorry. 8 I said, object to form. 9 A. So the it says, "The angled opening at the 10 proximal opening of the tubing of the guide extension 11 catheter." 12 So the proximal -- the opening is at the 13 proximal end of the tubing, yes. 14 BY MR. PINAHS: 15 Q. And in your experience, is it common to have a 16 tubular portion distal to the side opening of a catheter? 17 MR. KOHLHEPP: Object to form. 18 A. Could you repeat that question for me, please. 19 Sorry. 20 BY MR. PINAHS: 21 Q. In your experience, is it common to have a 22 proximal end -- excuse me. Let me rephrase that. 23 In your experience, is it common to have a 24 tubular portion distal to the side opening of a 25 catheter?</p>
<p style="text-align: right;">Page 11</p> <p>1 A. I have 1012. 2 Q. Excellent. All right. I want to direct your 3 attention to page 17. Again, I'm working from the lower 4 left-hand column page numbers. 5 Let me know when you're there. 6 A. I am there. 7 Q. Okay. And there should be a discussion of the 8 claim term "side opening." Do you see that? 9 A. Claim number 5. 10 Q. And in the right-hand column, is VSI, or 11 Teleflex's proposed construction of side opening. 12 Do you see that? 13 A. I do, yes. 14 Q. And is that the construction of side opening 15 that you applied in your declaration? 16 A. As I state, other than the claim terms that I 17 put in it, the rest comes from 1012, so that would be it. 18 Q. All right. And it states here that a side 19 opening is an angled opening at the proximal end of the 20 tubing of the guide extension catheter. 21 That's the construction you applied, 22 correct? 23 A. That is correct. 24 Q. And that language would indicate that a tubular 25 region is found distal to the side opening, correct?</p>	<p style="text-align: right;">Page 13</p> <p>1 A. It's not common. 2 Q. So let's take, for example, the GuideLiner. 3 The GuideLiner has a proximal side opening 4 and a tubular portion distal to that, correct? 5 A. Correct. 6 Q. And do you remember the Itou reference we were 7 talking about yesterday? 8 A. I do, yes. 9 Q. And that's another example of a proximal side 10 opening with a tubular portion distal to the opening, 11 correct? 12 A. As described in Itou, yes. 13 Q. All right. I want you to flip now to page 10 14 of that document. 15 I want to direct you to the claim term 16 "flexible tip portion." Do you see that? 17 A. I do, yes. 18 Q. And it's says, "Plain and ordinary meaning for 19 flexible tip portion." Do you see that? 20 A. Under VSI's construction, do you mean? 21 Q. Correct. Yeah. 22 A. So "No construction necessary. Flexible tip 23 portion and flexible cylindrical distal tip portion 24 should be given their plain and ordinary meaning." 25 I see that.</p>

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<p style="text-align: right;">Page 14</p> <p>1 Q. So what is the plain and ordinary meaning of 2 flexible tip portion? 3 MR. KOHLHEPP: Object to form; scope. 4 A. Its tip portion that is distal and is flexible. 5 BY MR. PINAHS: 6 Q. And would it have a lumen? 7 A. It doesn't specify that. 8 Q. As you read as one of skill in the art, would 9 you know whether or not a flexible tip portion has a 10 lumen? 11 MR. KOHLHEPP: Object to form. 12 A. It doesn't necessarily have to have one. 13 BY MR. PINAHS: 14 Q. All right. I want you to go down to the next 15 claim term on this same page, which is defining a rail 16 structure without a lumen. And I want you to go to VSI, 17 Teleflex's proposed construction. 18 A. Yes. 19 Q. And it states that "The lumen means a 20 passageway through which interventional cardiology 21 devices are insertable." 22 Do you see that language? 23 A. I do, yes. 24 Q. And when we were talking about a lumen 25 yesterday, is that your understanding or is that the</p>	<p style="text-align: right;">Page 16</p> <p>1 claimed construction. And I'll orient you, Doctor, to 2 paragraph 93 of your declaration. I'm going to ask some 3 really high-level questions. I don't think you're going 4 to need your declaration, but feel free to take a look if 5 you want to. I want you to know where I'm going. 6 A. Okay. I am at paragraph 93. 7 Q. So I think it's your opinion that no lumen 8 structures are cited for the tip portion and reinforced 9 portion of that claim term, right? 10 A. For claim 25 of the '380 patent, I agree. 11 Q. And I think you set this forth in paragraph 96 12 of your declaration, but did you consult the 13 specifications of the '380 patent in reaching that 14 conclusion? 15 A. So I've read all the patent -- 16 MR. KOHLHEPP: Objection, form. 17 A. I've read all the patents; but yes, I read all 18 of the claims of all the patents, so I have read claim 25 19 of the '380 patent. 20 BY MR. PINAHS: 21 Q. All right. I want you to read the last 22 sentence of paragraph 96, please. 23 A. "In my opinion, there is not enough structure 24 for performing these functions described in the claim 25 alone because the claim lacks the necessary structure at</p>
<p style="text-align: right;">Page 15</p> <p>1 interpretation you applied? 2 A. Well, it depends. 3 Q. And what does it depend on, Doctor? 4 A. Well, it depends if you're talking about an 5 artery or a vascular structure, the term "lumen" would 6 refer to that. 7 But for this the term "lumen" is construed 8 as the passageway or conduit through which interventional 9 cardiology devices are insertable. I agree with that. 10 Q. All right. Yes, that's a fair clarification, 11 Doctor. Let me put -- let me rephrase that question. 12 When we were talking about the lumen of 13 catheters, do you interpret that to mean a passageway 14 through which interventional cardiology devices are 15 insertable? 16 A. If the catheter is designed to have an 17 interventional device inserted through it, then, yes, the 18 lumen would be what I would state is a passageway through 19 which interventional cardiology devices are insertable. 20 But the caveat is if that device is 21 designed and intended to have devices passed through it. 22 Q. Understood. Doctor, you can set that document 23 aside for now. 24 All right. I'm going to ask some 25 questions now about the means for receiving and guiding</p>	<p style="text-align: right;">Page 17</p> <p>1 least for guiding the interventional device deeper into 2 the branch vessel." 3 Q. All right. So in concluding that the tip 4 portion and the reinforced portion do not recite a lumen, 5 you considered the claim language alone, correct? 6 MR. KOHLHEPP: Object to form. 7 A. So I considered a lot of things, but -- and 8 the -- the -- so the structure -- so yes. Yes. 9 BY MR. PINAHS: 10 Q. I didn't get a clean answer on that, Doctor. 11 Just let me ask it again. 12 So in concluding that the tip portion of 13 the reinforced -- let me try that again. I'm reading it 14 wrong myself. 15 So in concluding that the tip portion and 16 the reinforced portion do not recite a lumen, you 17 considered the claim language alone, correct? 18 MR. KOHLHEPP: Object to form. 19 A. Well, the claim language and the knowledgeable 20 of a POSITA. 21 BY MR. PINAHS: 22 Q. Okay. And you didn't consult the 23 specification, correct? 24 MR. KOHLHEPP: Object to form. 25 A. Could you define or expand on that?</p>

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